

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TECK GENERAL PARTNERSHIP; KERMIT
C. ZIEG, JR.,

Plaintiffs-Appellants,

v.

CROWN STATIONS, INCORPORATED,

Defendant-Appellee.

No. 00-1134

TECK GENERAL PARTNERSHIP; KERMIT
C. ZIEG, JR.,

Plaintiffs-Appellants,

v.

CROWN STATIONS, INCORPORATED,

Defendant-Appellee.

No. 00-2572

Appeals from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Leonie M. Brinkema, District Judge.
(CA-99-1068-A)

Submitted: March 30, 2001

Decided: April 20, 2001

Before MOTZ and KING, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Teck General Partnership, Kermit C. Zieg, Jr., Appellants Pro Se.
Michael Patrick McGovern, KELLEY, DRYE & WARREN, L.L.P.,
Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Teck General Partnership appeals from the district court's orders granting summary judgment in favor of, and awarding attorneys' fees and costs to, Crown Stations, Inc. ("Crown Stations") under the Virginia Oil Spill Act, Va. Code Ann. §§ 62.1-44.34:18.F (Michie 1998) (the "Act"). Our review of the record and the district court's opinions discloses that this appeal is without merit.

First, we find that the district court properly granted summary judgment to Crown Stations. After giving Teck ample opportunity of discovery and to argue the issues, the district court found that the only evidence on the record regarding Teck's claim under the Act, including the report of Teck's own expert, supports the conclusion that the leakage at issue originated from underground tanks. Because leakage from underground storage is explicitly exempt from the Act, and because Teck's theory in opposition is not based on any record evidence, we find that the district judge properly granted summary judgment on the Virginia Oil Spill Act claim.

As to Teck's claims for common law trespass and negligence, the district judge confirmed at the summary judgment hearing that Crown Stations had no involvement in the installation, management, or operation of the gasoline service station, and its sole act was to lease the land to a third party. Under these facts, we find that the district court

properly awarded summary judgment to Crown Stations on both the trespass and negligence claims under Virginia law.

We further find that the district court properly assessed fees and costs against Teck pursuant to the Act. Given our finding that summary judgment was properly granted to Crown Stations, Crown Stations, as the prevailing party, is entitled to reasonable attorneys' fees and costs. Teck's claims in opposition are without merit. Teck prevailed under the law, and fees and costs therefore are appropriate under the Act.

Accordingly, on the reasoning of the district court, we affirm the district court's orders granting summary judgment in favor of, and awarding attorneys' fees and costs to, Crown Stations. *Teck General Partnership v. Crown Stations*, No. CA-99-1068-A (E.D. Va. Jan. 10 & Feb. 14, 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED